



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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ACTING BUREAU CHIEF FOR LITIGATION

March 17, 2008

By Hand

Hon. William H. Pauley  
United States District Judge  
United States Courthouse  
500 Pearl St., Room 2210  
New York, NY 10007

MAR 18 8

Re: Prather v. Marshall, 07Cv8270

Dear Judge Pauley:

This office represents the defendants Marshall and Chu in this pro se inmate case involving accommodation of Muslim dietary practice. As per defendants' attached so ordered application, the Court permitted an answer on behalf of defendant Kelly by March 20, 2008, if that defendant's identity and location could be ascertained, with plaintiff being instructed to provide additional information on Kelly's identity by March 11, 2008. On March 17, 2008 we sent a letter to your Honor requesting the Court to dismiss defendant Kelly from the case and to modify the caption accordingly. We received the attached correspondence from plaintiff, postmarked March 13, 2008 and received by our office a few hours after we sent the above referenced letter.

Plaintiff now advises that defendant Kelly is Sergeant Scott Kelly, who worked the 3:00 p.m. to 11:00 p.m. shift. In our February 19, 2008 letter to the Court we advised that Sergeant Scott Kelly was transferred from Sing Sing on or about December 6, 2006, a month before plaintiff's cause of action arose. See Compl. ¶ III (B). As Sergeant Kelly is not a proper defendant in this matter we continue to request that your Honor memo endorse this letter to reflect that Sergeant Kelly be deemed dismissed from this case and the caption be deemed modified accordingly.

Application Denied. Defendant can  
SO ORDERED: file a motion to  
dismiss without a pre-motion  
conference.

William H. Pauley III  
WILLIAM H. PAULEY III U.S.D.J.

Respectfully submitted,

Wesley E. Bauman  
WESLEY E. BAUMAN  
Assistant Attorney General  
212-416-6296

Encls.

cc. James Prather, pro se (by regular mail w/ encls.)